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FILED
SEP 25 1942
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1942

No. 259

IN THE MATTER OF KENTUCKY FUEL GAS CORPORATION

Debtor No. 991-B

H. CLYDE REEVES, Commissioner of Revenue of the Commonwealth of Kentucky, Intervening Petitioner . . . Petitioner

vs.

BEN WILLIAMSON, Jr., Trustee of the Kentucky Fuel Gas Corporation.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals, Sixth Circuit, and Brief in Support Thereof.

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Supreme Court of the United States

OCTOBER TERM, 1942

No. 259

IN THE MATTER OF KENTUCKY FUEL GAS CORPORATION

Debtor No. 991-B

H. CLYDE REEVES, Commissioner of Revenue of the Commonwealth of Kentucky, Intervening Petitioner ..... *Petitioner.*

Vs.

BEN WILLIAMSON, JR., Trustee of the Kentucky Fuel Gas Corporation.

Petition for Writ of Certiorari to the Circuit Court of Appeals of the United States, Sixth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

I.

Summary of Statement of the Matter Involved.

The Kentucky Fuel Gas Corporation is a Delaware corporation. It did business in Kentucky during the cal-

endar year of 1938 operating under the trusteeship of Ben Williamson, Jr., who was duly appointed in bankruptcy action No. 991-B in the United States District Court for the Eastern District of Kentucky.

Petitioner, H. Clyde Reeves, is the Commissioner of Revenue of the Department of Revenue of the Commonwealth of Kentucky, and as such has the duty of collecting all delinquent taxes owing the Commonwealth.

The Kentucky Tax Commission is the assessing body of the Department of Revenue, and did assess the Kentucky Fuel Gas Corporation on the property held as of December 31, 1938, in accordance with Sec. 4077 Baldwin's 1938 Kentucky Statutes Supplement, and Sec. 4078a Carroll's Kentucky Statutes, 1936 edition. (Appendix "A")

During 1938 this corporation held $275,000.00 invested in Postal Savings certificates. (Title 39, Sec. 759, U. S. C.) This property was assessed at fifty cents per one hundred dollars' value, in accordance with Sec. 4019 Baldwin's 1938 Supplement to Carroll's Kentucky Statutes. (Appendix "B").

The tax on this $275,000.00 amounted to $1,375.00, and said assessment became final on June 1, 1939, when notice thereof was received by said Corporation under the provisions of Sec. 4091 Carroll's Kentucky Statutes, 1936 edition (Appendix "C"). And thirty days after notice of amount of said tax was given by the Department of Revenue (on July 1, 1939) said corporation must be considered delinquent, and the penalty provided for by said Statute amounting to $137.50 attached. (Appendix "C")

On October 18, 1939, after the trustee refused to pay this tax, the petitioner filed with the trustee a verified proof of claim asserting the liability of the debtor for taxes, penalty and interest. The trustee filed in the Federal District Court of the Eastern District of Kentucky a petition for advice. The Court gave the opinion found in the record, (Pages 11 to 16) and reported in 37 Federal Supplement 625.

On April 11, 1941, petitioner, H. Clyde Reeves, filed an intervening petition in this bankruptcy action (Tr. Rec. P. 1). The trustee made a motion to dismiss on the ground that the petition did not state facts sufficient to constitute a cause of action (Tr. Rec. P. 5). A stipulation of facts was placed in the record, (Tr. Rec. P. 6).

On April 11, 1941, an order was entered denying the tax claim, ruling the assessment invalid and dismissing the petition. (Tr. of Rec. P. 10). From this order the petitioner appealed to the Circuit Court of Appeals, Sixth Circuit, which Court affirmed the judgment of the District Court, (Tr. Rec. P. 21).

The sole question involved in this proceeding is the liability, under the provisions of Sec. 4019 Carroll's Kentucky Statutes, Baldwin's 1938 Supplement, of Kentucky taxpayers for the intangible property tax on Postal Savings certificates owned by them.

II.

Jurisdiction of the Supreme Court.

The jurisdiction of the Supreme Court of the United States is invoked under Sec. 240 of the Judicial Code as amended by the Act of Feb. 13, 1925, C. 299, Sec. 1 (43 Stat. 938), (U. S. Code Ann., Title 28, Sec. 437 (a)).

III.

Question Presented.

Whether the Commonwealth of Kentucky may lay an intangible property tax on Postal Savings certificates in the hands of Kentucky taxpayers at the general rate charged on intangible property.

IV.

Reasons for Granting the Writ.

This is a test case upon the decision of which the taxability of Postal Savings certificates owned by Kentucky taxpayers will depend.

The Circuit Court of Appeals and the District Court held invalid Sec. 4019 Kentucky Statutes, Baldwin's 1938 Supplement, and adjudged that the taxation of Postal Savings certificates under the provisions of said Statute would be discriminatory and would interfere with the operations of the Federal Government.

This was a decision on an important question of Federal law which has not been heretofore considered by this Court, and the importance of it is such that it should be settled. This is emphasized by the fact that the Supreme Court of Indiana, in the case of *Lutz* v. *Arnold,* 193 N. E., 840, has held under a similar taxing statute that Postal Savings certificates were taxable in that State.

Furthermore, the opinion of the Circuit Court of Appeals in this case is in apparent conflict with this Court's opinion in the case of *Madden* v. *Kentucky,* 309 U. S. 83, 84 Law Ed. 590, with respect to the classification of intangible property for the purposes of state taxation. For this added reason, therefore, this Court should allow this writ and reverse the decision of the Circuit Court of Appeals.

Prayer for Writ.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record, and all proceedings in the case, number and title on its docket, "No. 8973, In the Matter of Kentucky Fuel Gas Corporation Debtor No. 991-B, H. Clyde Reeves, Commissioner of Revenue of the Commonwealth of Kentucky, Intervening Petitioner, Appellant v. Ben Williamson, Jr., Trustee of the Kentucky Fuel Gas Corporation, Appellee," and that said judgment of the said United States Circuit Court of Appeals for the Sixth Circuit may be reviewed by this Honorable Court, and

that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

H. Clyde Reeves,
Commissioner of Revenue for the Comlth. of Kentucky, Intervening Petitioner, Petitioner.

Hubert Meredith,
Attorney General of Kentucky.

Jesse K. Lewis,
Assistant Attorney General,

Counsel for Petitioner.